KUALA LUMPUR HILTON

v.

NATIONAL UNION OF HOTEL, BAR & RESTAURANT WORKERS

HIGH COURT MALAYA, KUALA LUMPUR
WAN HAMZAH J
[ORIGINATING MOTION NO. A30 OF 1984]
28 OCTOBER 1988

LABOUR LAW: *Industrial Relations Act, ss. 30(4), (5), (6), 33(B) - Certiorari - 16 butlers going on medical leave at one time - Illegal strike - Whether absence justified - Whether reference from Minister conferred jurisdiction on Industrial Court to consider suspension on half pay - Whether acting in excess of jurisdiction - Principles on which Industrial Court is to act - Findings of fact of Industrial Court final and conclusive.*

The applicant applied for an order of *certiorari* to quash a decision given by the Industrial Court in favour of the respondent.

In May 1983 an international conference was held in the premises of the applicant. On 4 May 1983 one of the delegates reported the loss of some personal valuables from her room. On 5 May 1983 the room butler was detained by the police for questioning but was released the same evening. A group of butlers unhappy with the incident asked for an assurance from the management that they would not be questioned or detained by the police in connection with the same matter. The applicant was unable to provide this assurance. On 6 and 7 May 1983 16 butlers went on medical leave supported by medical certificates from the applicant's doctor, the government medical officer or private medical practitioners.

All 16 butlers were given show cause letters why disciplinary action should not be taken against them. In this letter it was alleged that each of them failed to report for duty in combination with others and that such failure was a serious misconduct under the Industrial Relations Act amounting to an illegal strike. Thereafter the 16 were suspended on half-day pay.

A domestic inquiry was thereafter held and all 16 butlers were found guilty of having acted jointly under a common understanding of refusal to report for work, in protest against police action and the management's alleged inaction, which was considered as an illegal strike. All 16 butlers were issued with stern warning letters.

The Industrial Court found that the medical certificates produced were neither questioned nor challenged and were accepted genuine. The absence of the 16 butlers were therefore justified. As such, there was no strike to warrant justification of the suspension or the warning letters. The Industrial Court therefore ordered that full wages be paid during the period of suspension and the warning letters rescinded.

The applicant applied to the High Court for an order of *certiorari* to quash the decision of the Industrial Court. The applicant put forward 5 grounds, namely:

(i) that the Industrial Court acted in excess and without jurisdiction in making the order in light of the reference made by the Minister dated 20 October 1983 which read "... telah memutuskan bahawa pertikaian ... mengenai surat amaran ... dirujukkan ke Mahkamah Perusahaan ..." which only referred to the warning letters and not to the half-pay issue. The decision to suspend on half-pay was pursuant to s. 14 of the Employment Act and

the correct procedure is to make a complaint to the Director General of Labour under this Act. The Industrial Court therefore had no jurisdiction to consider and decide the dispute relating to suspension and half-pay;

(ii) that the Industrial Court had acted *ultra vires* s. 30(4) and (5) of the Industrial Relations Act; and

(iii) -(v) that the Industrial Court had acted against certain evidence and that the findings etc were against the weight of evidence.

Held:

[1] Ground (i) of the applicant's contention must fail as the Industrial Court did have the necessary power under s. 30(6) of the Industrial Relation Act.

[2] It is expedient for the Industrial Court to dispose of the dispute relating to the suspension of half-pay in order to save time and costs for all concerned in having to go through another separate inquiry.

[3] It was implicit that the reference from the Minister covered the dispute on the suspension on half-pay.

[4] The applicant's second contention must fail as there was nothing to show that the Industrial Court had failed to have regard to the public interest or to the effect of the award on the economy of the public interest or to the effect of the award on the economy of the country or on the industry - there was also nothing to show that the Industrial Court had failed to act according to equity and good conscience.

[5] The 3rd to 5th contentions of the applicant must fail as there concern matters of pure facts and under s. 33B of the Industrial Relations Act the decision of the Industrial Court on such matters shall be final and conclusive and cannot be called in question in the High Court.

[Certiorari refused.]

Legislation referred to:
Employment Act 1955, ss. 14, 69(3)
Industrial Relations Act 1967, ss. 30(6), 31(4), (5), 33B

For the applicant - T.M. Varughese; M/s. T.M. Varughese & Co.
For the respondent - Gangadharan (Mahalingam with him); M/s. Aziz Abdullah & Co.

JUDGMENT

Wan Hamzah J:

The Minister of Labour referred to the Industrial Court a trade dispute between the Kuala Lumpur Hilton and the National Union of Hotel, Bar & Restaurant Workers. The Industrial Court made an award i.e. award no. 104 of 1984, in favour of the union. Now the Kuala Lumpur Hilton applies to this Court for an order of *certiorari* to remove that award into this Court for the purpose of its being quashed. The following are some of the facts stated by the Industrial Court in the award. An international conference hosted by the Malaysian Government was held in the Kuala Lumpur Hilton Hotel from the second to the seventh of May, 1983. On 4 May 1983 one of the delegates reported the loss of some personal valuables from her room. On 5 May 1983 the room butler was detained by the police for questioning but was released the same evening. A group of butlers were unhappy with the unpleasant

incident and asked for an assurance from the management that they would not be questioned or detained by the police in connection with the same matter. The Kuala Lumpur Hilton was unable to give such an assurance. On the sixth and seventh of May, 1983 sixteen butlers went on medical leave and they were covered by medical certificates issued either by the Kuala Lumpur Hilton's doctor, the government medical officer or private medical practitioners.

On 7 May 1983 each of them was given a show cause letter why disciplinary action should not be taken against him. In the letter it was alleged that each of them had failed to report for duty in combination with other butlers and that such failure was a serious misconduct under the Industrial Relations Act amounting to an illegal strike. Each of them was informed by the letter that he was suspended from work on half pay with effect from 7 May 1983 until further order. Eventually a domestic enquiry was held and the finding of the panel of enquiry was that all of the sixteen butlers were guilty of having acted jointly under a common understanding on refusal to report for work, in protest against police action and the management's alleged inaction, which was considered as an illegal strike. On the basis of that finding the management issued to each of the butlers a warning letter in the following terms:

> The management is satisfied that your act amounts to a serious misconduct which warrants dismissal. However, the management has decided not to impose the said punishment this time but to place on record and serve you this letter as a serious warning. You are hereby advised to treat this warning with full seriousness that it deserves. Should you commit any further misconduct, please note that it will not be treated lightly by the Hotel. You are advised to report for duty with effect from 24 May 1983.

The Industrial Court stated its findings and decisions as follows:

> We would have agreed with the hotel's contention if the claimants (the butlers) feigned illness, left their place of employment under the pretext of going for medical treatment and returned to work without medical certificates to cover the period of their absence, or if they had obtained medical certificates by false pretences. It will then be an act of serious misconduct which justifies disciplinary action. But here the claimants concerned did go for medical treatment - two to the company's doctor, one to the government medical officer and seven to the private registered medical practitioners. They were each given a medical certificate to the effect that they were medically unfit for work for the period of their absence. Their medical certificates were neither questioned nor challenged and were accepted as genuine. This is a fact before us and not a conjecture or presumption in such a case, although the claimants did not comply with the hotel's normal procedure of seeking medical treatment, nevertheless their absence from work on the days in question was not without justification or without reasonable excuse. If their absence is justified, then, in our view, it cannot be construed as a strike, be it illegal or otherwise. Under such circumstances, we hold that the suspension of the claimants were unjustified and the warning letters issued, unwarranted. We, therefore, order that the warning letters issued to them be rescinded and that they be paid their full wages for the period from 7 May 1983 to 20 May 1983.

The Kuala Lumpur Hilton has submitted five grounds to support its application to this Court for an order of *certiorari*. I find that there is no merit in any of the grounds. I shall now deal with each of the grounds.

The following is the first ground: "The Industrial Court acted in excess and without jurisdiction in making the order as it did, without having regard to the reference made by the Honourable Minister dated 20 October 1983 on a single specific issue only." The letter from the Ministry of Labour conveying the reference to the Industrial Court read as follows:

> Y.B. Menteri Buruh telah memutuskan bahawa pertikaian di antara kedua-dua pihak tersebut di atas mengenai surat amaran kepada 16 orang pekerja dirujukkan ke Mahkamah Perusahaan di bawah s. 26(2) Akta Perhubungan Perusahaan 1976 untuk satu keputusan.

It was submitted that the decision to suspend the butlers on half pay was made pursuant to s. 14 of the Employment Act, and that if they were aggrieved by that decision they should have applied to the Director General of Labour to take action under s. 69(3) of the Employment Act. It was submitted that the Industrial Court had no jurisdiction to consider and decide on the dispute relating to the suspension and half pay. In my judgment the Industrial Court had such jurisdiction under s. 30(6) of the Industrial Relations Act which reads:

> In making its award, the Court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute or in the matter of the reference to it under s. 20(3) but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute or the reference to it under s. 20(3).

In my judgment it was expedient for the Industrial Court to dispose of the dispute relating to the suspension on half pay in order to save time and costs for all concerned in having to go through another separate inquiry.

Although in the letter from the Ministry of Labour to the Industrial Court no mention was made of the dispute relating to the suspension on half pay, it is implicit that the reference covered also that dispute. The letter of warning referred to the finding of the panel of inquiry and it conveyed the decision of the management on the basis of the finding. It gives the impression that the decision was the final decision on all the relevant aspects given after a full inquiry. In it no mention was made of any change in the previous decision of the management in the same matter, i.e. the decision to pay half wages only for the period from 7 May 1983 to 20 May 1983, and this implied that the previous decision regarding the wages was confirmed, and this in turn raised a dispute as to the wages as well. Thus the implication is that the reference of the dispute relating to the letter of warning included also a reference of the dispute on the wages and suspension.

The Kuala Lumpur Hilton's second ground to support its application for an order of *certiorari* is that the Industrial Court in making its award acted *ultra vires* s. 31(4) and (5) of the Industrial Relations Act. But it was not shown how any thing contained in the award was *ultra vires*. There was nothing to show that the Industrial Court had failed to have regard to the public interest or to the effect of the award on the economy of the country or on the industry. There was nothing to show that the Industrial Court had failed to act according to equity and good conscience.

Other grounds to support the application are that the Industrial Court had ignored certain evidence adduced by the Kuala Lumpur Hilton and had made findings against the weight of evidence. But these matters are purely matters of facts and under s. 33B of the Industrial Relations Act the decision of the Industrial Court on such matters shall be final and conclusive and cannot be called in question in the High Court. Moreover I find that the Industrial Court had not addressed the wrong questions or taken into account irrelevant matters. I find that it had considered all matters which it ought to have taken into account.

The application is dismissed with costs.

Also found at [1989] 1 CLJ 216